APPEAL NO. 021176
FILED JUNE 17, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 22, 2002. With regard to the only issue before him, the hearing officer determined that there was no good cause to relieve the appellant (claimant) from the effect of a Benefit Dispute Agreement (TWCC-24) signed on December 15, 1999.

The claimant appealed, alleging a number of matters, including that the six percent impairment rating (IR) that she had agreed to was unfair; that the designated doctor was biased; and that she was ill and under the effects of medication at the time of the TWCC-24. The respondent (carrier) responds, urging affirmance and noting that, at the time of the BRC at issue, there were four IRs in existence, three zeros and the agreed-upon six percent; and that the agreed-upon maximum medical improvement (MMI) date was the latest of the MMI dates in any of the reports.

DECISION

Affirmed.

The claimant, in her appeal, submits additional information not offered at the CCH. The Appeals Panel has frequently noted that documents and information submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993. To constitute "newly discovered evidence," the evidence would need to have come to the appellant's knowledge since the hearing; it must not have been due to lack of diligence that it came to the appellant's knowledge no sooner; it must not be cumulative; and it must be so material it would probably produce a different result upon a new hearing. *See* Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence does not meet the requirements for newly discovered evidence and will not be considered on appeal.

This case is somewhat complicated in that the claimant had apparently sustained a prior compensable injury (and two subsequent motor vehicle accidents) in addition to the compensable _____, injury to her knees at issue here. There was also considerable misunderstandings and confusion regarding the payment of short-term and long-term group disability benefits (by another unrelated carrier) and a defense of exhaustion of administrative remedies raised in a case brought by the claimant in a U.S. district court for long-term group disability benefits. (The claimant testified that one of the reasons she entered into the TWCC-24 was that she had been told she had to exhaust her workers' compensation remedies.)

The hearing officer found that the claimant, the carrier's representative, and the benefit review officer had signed a TWCC-24 which stated that the claimant reached

MMI on February 9, 1999, with a six percent IR as assessed by the designated doctor and that the claimant had provided no credible evidence to show good cause why that agreement should be set aside. The hearing officer's discussion made it clear that he did not believe the claimant's allegations that she was ill at the time the TWCC-24 was entered into. In Texas Workers' Compensation Commission Appeal No. 92426, decided October 1, 1992, which involved the issue of good cause to set aside a TWCC-24, we applied an abuse-of-discretion standard in our review of a hearing officer's determination that there was no good cause to set aside a TWCC-24. We stated that the determination of good cause is a decision best left to the discretion of the hearing officer, and that the hearing officer's decision will only be set aside if that discretion has been abused. Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986). To determine if the hearing officer abused his discretion, we look to see if the hearing officer acted without any guiding rules and principles. *See* Appeal No. 92426, *supra*. Applying the cited standard, we determine that the hearing officer, in this case, did not abuse his discretion in determining that the claimant did not have good cause for setting aside the TWCC-24.

Accordingly, with regard to the only issue before him, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **BANKERS STANDARD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN MOUNTAIN
ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Judge

Roy L. Warren
Appeals Judge